IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-9-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.24700 of 2006

and

MP Nos.1 of 2006 and 1 of 2007

C.Kuppuswamy .. Petitioner

vs

1.The Secretary
Tamil Nadu Construction Workers
Welfare Board
Valluvar Kottam High Road
Chennai 600 034.
2.D.Harikrishnan .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent's impugned order in A1 25063 of 2006 dated 26.6.2006 and quash the same as arbitrary and illegal.

For Petitioner : Mr.J.Saravana Vel
For Respondents : Mr.K.S.Narayanan for R2
No appearance for R1

ORDER

Seeking a writ of certiorari to quash the order of the first respondent made in A1 25063 of 2006 dated 26.6.2006 as arbitrary and illegal, the petitioner has brought forth this writ petition.

2.The affidavit in support of the petition is perused. The Court heard the learned Counsel on either side.

3.From the submissions made by the learned Counsel on either side, it could be seen that the second respondent filed a suit in O.S.No.517 of 2000 pending on the file of the City Civil Court, Madras, claiming to represent the plaintiff Trade Union and seeking for a declaration that the plaintiff Union Office Bearers alone are entitled to use the name of the plaintiff's Union "The Tamil Nadu Construction Employees Welfare Central Union, with the Registration Number 2333/MDS, having the registered office at No.69, East Jones Road, Saidapet, Chennai 600 015" and for consequential injunction. In that suit, the petitioner is arrayed as second defendant, and it was being contested by all the defendants by

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filing the writ statements. Pending the disposal of the same, the second respondent filed I.A.No.1434 of 2000 for interim injunction. The said I.A. was dismissed on merits by the said Court by an order dated 8.1.2001. Against that order, the second respondent filed an appeal in CMA No.68 of 2001 before the appellate forum. The same was also dismissed in the year 2002. Thereafter, the second respondent filed a revision before this Court in CRP No.614/2003, and it was also dismissed. Thus, all the Courts have held that the second respondent has not made out a prima facie case for interim order pending disposal of the suit. Subsequently, the suit was posted in the special list on 31.1.2005. However, the second respondent took adjournment for number of hearings. When the matter was posted, the second respondent completed his chief examination on 22.3.2006. On 12.4.2006, the III Assistant Judge, City Civil Court, Madras, has passed an ex-parte decree against the petitioner. Thereafter, an application to set aside the ex-parte decree has been filed in I.A.No.8671 of 2006, and the same was posted for enquiry. During the pendency of the suit, the petitioner was permitted by the first respondent to enroll new members as well as renew the existing applications of the workers in the Board. However, at the instigation of the second respondent, who was expelled from the Union for improper activities, the first respondent has passed the impugned order by which the petitioner and others who are the defendants in the suit, have been forbidden from being eligible to present applications on behalf of the the construction workers. Under the circumstances, the impugned order dated 26.6.2006, is challenged.

4.Now, it is brought to the notice of the Court that the ex-parte decree passed in O.S.No.517 of 2000, has been set aside by allowing I.A.No.8671 of 2006. Thus, it would be quite clear that now, the suit is restored to file, and it is pending. Both the parties have to put forth their respective contentions before that Court, and it has got to be decided on merits. Pursuant to the ex-parte decree, the impugned order came to be passed by the first respondent, which is the subject matter of challenge. Once the ex-parte decree passed by that Court, has been set aside and the parties are to put to status quo ante and to proceed with the suit and put forth their merits of the case, automatically, the order passed by the first respondent pursuant to the ex-parte decree passed, has got to be set aside. Accordingly, it is set aside. Keeping it open for both the parties to raise their respective contentions on the merits of the matter in the suit pending on the file of the said Court, this writ petition is disposed of. No costs. Consequently, connected MPs are closed.

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Asst.Registrar

nsv

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Sub Asst.Registrar

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To

1. The Secretary Tamil Nadu
   Construction Workers
    Welfare Board,
   Valluvar Kottam High Road,
   Chennai34.

+ 1 cc to Mr.A.Thirumaran Advocate SR.NO.56592
+ 1 cc to Mr.K.S.Narayanan Advocate SR.NO.56602
+ 1 cc to Mr.P.V.Bakthavatchalam Advocate SR.NO.56683

SCD(CO)
RD 14.8.09

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